

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Meeting Minutes

August 28, 2003
10:00 AM – 2:00 PM
State Courts Building
Conference Room 119
Phoenix, AZ

CIDVC Members Present

Hon. William O'Neil, Chair
Jerry Bernstein, Esq.
Evelyn Buckner
Lt. Mark Carpenter
Bob James
Dr. Teresa Lanier
Sheri Lauritano, Esq.
Robert M. Lehner
Hon. Denise Lundin
Hon. Mark Moran
John Pombier, Esq.
Tracey Wilkinson

Members using a Proxy

Hon. George Anagnost (Bob James, Proxy)
Martha F. Harmon (John Pombier, Proxy)
Patricia Klahr (Tracey Wilkinson, Proxy)
Hon. D. Hendrix (Hon. M. Moran, Proxy)

Staff Present

Catherine Drezak
Konnie Young
Karen Kretschman
Chris Claxton

Quorum: Yes

Members RSVP (unable to attend)

Margaret Bentzen
Hallie Bonger-White, Esq.
Allie Bones
Hon. Sherry Geisler
Martha Fraser Harmon
Patricia Klahr
Anu Partap, M.D.
Hon. Chris Wotruba

Members Not Present

Hon. George Anagnost
Hon. Sherry Geisler
Hon. Danna Hendrix
Hon. Mary Helen Maley

Guest

Robert Roll, IT Division, AOC

1. Call Meeting to Order: Judge O'Neil

The meeting was called to order at 10:00 AM. All those present introduced themselves. Guests attending the meeting were welcomed.

2. Review of Previous Meeting Minutes: Judge O'Neil

Minutes of the June 19, 2003 meeting were reviewed.

Motion: Minutes be accepted

Vote: Unanimous (verbal vote)

Tasks: None

3. Workgroup Reports:

A. Criminal Benchbook

Judge Moran gave a report on the status of the Criminal Benchbook. Staff reminded the Committee that December 1 is the deadline for providing the transcript to Education Services, AOC, for publication on the web and on CDs. Judge Moran asked for an updated CIDVC membership list. The subcommittee met last month to work on changes. A lot of the changes were cleaning up language and eliminating language that did not belong in a Benchbook. The subcommittee did elicit from certain committee members additional sections to be included. This would include a section proposed by Judge Moran on *Orders to Show Cause* regarding failure to comply with batterer programs.

They also looked at the HIPPA regulations to see if they have changed what the judge needs to do in criminal domestic violence cases in regard to evidence. The subcommittee concluded that HIPPA does not really affect the present state of the law which is stated in the Benchbook. Some language in the Benchbook which the prosecution side had submitted really was not appropriate. Much of that was deleted. The subcommittee feels they have gone as far as possible without input from the Committee. All proposed changes to date are in the version posted to the AOC website. Suggested comments from the committee include:

1. Section 4-7: New case needs to expand on *Lynn v. Reinstein*, involving the right of a victim to address the jury in homicide case.
2. Section G is not an accurate statement of current law; additional background on recent legislation is needed.
3. Regarding Section J, 13.004, SB 1267 is much broader than what is represented in the Benchbook, in that any proceeding in which a victim has a right to speak is not discoverable to the court, the state, or the defense. This needs to be rewritten to include all aspects of SB 1267 (handed out to members).
4. A section on contempt needs to be defined; reference is to a special prosecutor being needed/judge removes him/herself in this proceeding. Judge Moran indicated this was on page 11-9 and Appendix C, regarding the ethics opinion.
5. Some unnecessary language needs to be omitted (i.e., "Then follow through." on page 4-6).
6. The section regarding dying declarations and terms of probation needs to be clarified.
7. Judge O'Neil asked if there was anything in the Benchbook regarding how to advise people that the law is not concrete and that what happened five years ago might not be applicable to date. Judge Moran said there was nothing like this represented at the present time and suggested that this could be incorporated in the introduction page.

8. Page 11-9: John Pombier cited a case where a judge compared a plea agreement to a contract, and when the defendant did not comply, he made the defendant adhere to the terms of the contract. (John will send this case to Konnie Young in order that it may be included.)

After a discussion about the importance of SB 1267, John Pombier asked if SB 1267 needs to be addressed in a future legislative session. It has *Brady* implications. Judge O'Neil suggested obtaining an AG opinion on the subject; then CIDVC needs to address this issue at a later date.

Members were urged to lodge their written comments on the web site. An updated, hopefully final, version will be posted on the web site prior to the next CIDVC meeting; changes will be highlighted in yellow. A workgroup meeting for the DV Criminal Benchbook will be set up so the final changes can be made. The October meeting is the last meeting in which this Benchbook may be formally approved by CIDVC prior to December 1 (see subsequent minute's entry re: meetings).

Judge O'Neil complimented workgroup members on the product and indicated the DV Criminal Benchbook is a great accomplishment.

Motion: Review DV Criminal Benchbook; take a vote at October 15 meeting regarding approval or disapproval of the Benchbook.

Vote: Unanimously approved

B. DV Forms Workgroup

Bob James gave a report on the product of the DV Forms Workgroup. He explained that with the AOC and the court system's focus on the development of the FARE program, and its implications and demands on IT, the workgroup recommends that only DV forms which require IT/AZTEC programming be addressed by the DV Forms Workgroup until a later time. Consequently, Bob James presented the *General Combined Petition* and *Order of Protection and Injunction Guide Sheet*, both of which have no IT/AZTEC programming implications to resources and IT staff. The two forms will be presented to LJC, COSC and AJC. The forms will be presented in Rule 10(d) format, ARCP. Two minor changes were suggested and made to the forms.

Motion: *General Combined Petition* and *Order of Protection and Injunction Guide Sheet* be approved

Vote: Unanimously approved

C. DV Benchbook Report

Catherine Drezak reported that the last version has been posted to the web site and that to her knowledge, all suggested changes and updates have been made. Catherine reminded the Committee that December 1 is the deadline by which Education Services needs the final version for CD production and posting to the web site and Intranet. This document, as it exists currently on the web site, is outdated and must be addressed quickly.

Discussion ensued; Bob James suggested that other Orders need to be incorporated; he also has other suggestions but wants to visit with Maricopa Superior judicial officers first. He suggested text should be added for *Injunctions against Harassment* and that there are punctuation and capitalization issues which must be addressed, as well. Evelyn Buckner volunteered to chair the workgroup, and staff will set up a meeting to address these issues.

Task: This item needs to be on the October 15 agenda for final approval.

4. Legislation

Page Gonzales reported about a proposed omnibus victims' rights bill being discussed by a workgroup she is attending. She asked for CIDVC members to assist. Sheri Lautaritano and John Pombier are part of this workgroup. Also, John Pombier reported that Rep. Russell Pearce is likely to propose another bill suggesting the following:

- 1) the need to distinguish between violent and non-violent DV calls;
- 2) the elimination of *ex parte Orders of Protection*; and
- 3) The concept of cross-orders or making any Order issued applicable to both parties.

Other possible legislative actions are possible changes to A.R.S. 13-3601(M) (Pearce proposes to eliminate) and 13-3602(D) (issue is that some jurisdictions will not serve orders from another jurisdiction). Diane Post thought the statute was already clear, but after members' comments she indicated the workgroup would take another look at the issue.

Issues: When discussing legislation that an "agency shall serve," look at resources instead and say "shall serve or cause to be served."

Another issue for this workgroup may be that DV Forms, in connection with the *Brady* issue, be changed to remove the *Brady* box and replace with a statement, such as "*Brady* applies if the following 'items' are applied to this Order."

The Battered Mothers' Testimony may also be another issue for CIDVC review.

5. CPOR Data Quality-Exception Reports/Holder of Record-ability to change information

Robert Roll, AOC IT Division, gave a presentation on the current problems encountered with the quality of data being placed in the datamart (JUSTIS) at the local court level. The following examples were given:

- 1) dates of birth are not entered, even though they appear on the petition;
- 2) party dates of birth are left blank;
- 3) Orders are marked as "served" but not "issued," and
- 4) *Protective Orders* are logged in without associated parties. As a result, the numbers do not "balance," and these data quality issues have led holders of record (largely sheriffs) in Arizona to request authorization to go into the datamart to make corrections from the hard copies they have in hand. Otherwise, DPS will not make the transmission to NCIC on the Orders which

have missing fields or incorrect information. Fields to which they would have access would be limited.

Motion: Allow Holders of Record to correct *Protective Order* data in CPOR in limited fields only to facilitate transmission to NCIC, allowing law enforcement access to the data.

Vote: Unanimously approved

Task: Robert Roll will speak to LJC on same topic.

6. Battered Women's Testimony Project

Diane Post gave a report on the Battered Women's Testimony Project. A study was done in New York which was funded by the Department of Justice. This study found that fathers were most likely to get visitation when they had an *Order of Protection* against the mother (75%). They were almost as successful in getting visitation when the mother had an *Order of Protection* against them (63%). When there was no *Order of Protection*, the fathers were granted visitation only 50% of the time. The study listed the same findings in regard to custody. The study found that the most violent fathers get the most visitation and custody. Lawyers were interviewed who said they would rather not bring up violence because they thought it would be used against their clients. The presence of domestic violence did not make any difference to the court.

There have been other studies with the same findings. Legislators are getting calls from their constituents who tell them horror stories of what goes on in family court. Diane spoke about several cases all over the country where the children are suing because they were ordered by the court to live with an abusive father. Diane told the Committee that this problem is not going to go away, and that if anyone should be dealing with it, it should be this Committee.

7. Letter from Chief Justice

Catherine Drezak reported on developments from the last meeting wherein committee members requested the Chief Justice to send a letter to all courts, reminding them that no charges were to be collected for *Orders of Protection* or *Injunctions Against Harassment*. The Chief Justice, however, requests concrete data regarding which courts, if any, are actually doing such charging in spite of statutory language to the contrary. He is reluctant to send out a letter accusing courts of doing something without hard data to back up the position. Members are to check their sources to see which courts, if any, are charging filing fees for these procedures. More specifically, the issue also involves fees charged on appeals in OP cases. Judge O'Neil indicated he would take this issue to the Presiding Judges' meeting in October, 2003.

8. Brady Issues

Catherine Drezak also reported on current *Brady* issues: Judges are not checking the *Brady* box, even if the case clearly qualifies for *Brady*. Additional education is suggested to further this issue; Judge O'Neil indicated he would take it to the Presiding Judges' meeting in October, 2003.

9. New Business: Judge O'Neil

In December, 2003, 14 members will be up for consideration of membership term renewals. Staff will send an e-mail inquiring about these 14 members' interest in renewing their membership and seeking nominations for open positions.

Discussion ensued regarding meeting frequency, given the amount of activity coming out of the various workgroups. Having quarterly meetings was urged, eliminating the June and December meetings on the current schedule.

Additional discussion ensued regarding possibly taking another look at the Ethics Opinion which the Committee has so often contemplated. Judge O'Neil asked that this issue be placed on a future agenda and encouraged members to submit their ideas for strategic planning/ projects for the Committee in the future. Judicial officers who are not on the Committee are also invited to review the Benchbooks and give their comments. September 19, 2003 is the deadline for Benchbook (Criminal) comments.

Motion: Quarterly meetings beginning in October, 2003; eliminate December and June meetings from current schedule

Vote: Unanimously approved

Task: Change meeting schedule.

10. Call to the Public

No members appeared.

11. Next Meeting: October 15, 2003, 10:00 – 2:00 PM, AOC Conference Room 345 A&B, Phoenix, AZ

12. Adjournment: Judge O'Neil

The meeting adjourned at 2:00 p.m.